

**BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION**

In re: 2015 MAY 21 P 3:14

Claim of Jackie Wilson  
DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT  
CRIMINAL DEPARTMENT

TIRC Claim No. 2011.021-W  
(Relates to Cook County Circuit  
Court Cases 82-1211-(02);  
88-CR-7771)

**AMENDED CASE DISPOSITION**

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code 3500.385(b), the Commission (TIRC) concludes that, by a preponderance of the evidence, there is sufficient evidence of torture of the claimant, Jackie Wilson, to merit judicial review. The Commission hereby refers this claim to the Chief Judge of the Circuit Court of Cook County. This decision is based upon the Findings of Fact and Conclusions set forth below, as well as the supporting record attached hereto.

**I. EXECUTIVE SUMMARY**

Jackie Wilson and his brother, Andrew Wilson, were arrested separately on February 14, 1982, for the February 9, 1982, murders of Chicago Police Officers Richard O'Brien and William Fahey.<sup>1</sup>

On May 26, 2011, Jackie Wilson filed a claim with the Commission alleging that during his interrogation, officers put a gun in his mouth, beat him over the head with a phone book, used electric shock, and struck and kicked him to extract a confession. (Exhibit A)

Following the interrogation, Jackie Wilson gave a signed, court-reported statement to police and a prosecutor in which he admitted to driving the car and being present at the scene when his brother, Andrew Wilson, shot and killed both officers. (Exhibit B) The statement also included an admission that, after Andrew Wilson shot Officer O'Brien, Jackie Wilson informed his brother that Officer O'Brien was still alive and moving.<sup>2</sup> Andrew Wilson then fired more shots into Officer O'Brien, who was pronounced dead on arrival at a nearby hospital. Jackie

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<sup>1</sup> Because review of Jackie Wilson's claim requires multiple references to events involving his brother, Andrew Wilson, each Wilson brother will be referred to by both first and last names throughout this determination in order to avoid confusion.

<sup>2</sup> Court-reported statement of Jackie Wilson, February 14, 1982, 12:20 p.m., at page 13 ("I told him [Andrew Wilson] he [Officer O'Brien] was still there, you know. He [Officer O'Brien] was up an[d] about.") (J. Wilson.court.reported.statement.pdf).

Wilson's admission of verbally assisting Andrew Wilson in connection with the murder of Officer O'Brien likely was key to the jury, which convicted Jackie Wilson of the murder of Officer O'Brien on an accountability theory but acquitted him of the murder of Officer Fahey.<sup>3</sup>

In investigating this claim, the Commission gathered and reviewed records from the first and second criminal trials of Jackie Wilson and Andrew Wilson, the first and second civil trials of *Andrew Wilson v. The City of Chicago*, the Chicago Police Board Hearing on internal charges against Commander Jon Burge and other detectives regarding torture of Andrew Wilson, the Special State's Attorney's investigation of Jackie and Andrew Wilson's claims of torture, and the criminal trial of Jon Burge.

The Commission also interviewed the Assistant State's Attorney and Public Defender who were present at Jackie Wilson's initial court appearance, and the court reporter who was present during Jackie Wilson's in-custody, court-reported statement. The Commission attempted to interview the other two surviving witnesses who were present at Jackie Wilson's court-reported statement – former Cook County Assistant State's Attorney Lawrence Hyman and former Chicago Police Detective Thomas McKenna – but they refused to speak with a Commission investigator and indicated in writing they would invoke their Fifth-Amendment right against self-incrimination if called to testify about events involving Jackie and Andrew Wilson. The Commission interviewed Jackie Wilson and his criminal trial attorney, Richard Kling, the private attorney, R. Fredric Solomon, who represented Jackie Wilson at his initial appearance, and other witnesses.

The Commission obtained from the Circuit Court Clerk copies of lineup photographs of Jackie and Andrew Wilson taken February 14, 1982. The Commission attempted to obtain by subpoena a Polaroid photograph of Jackie Wilson taken shortly after his court-reported statement, his Cook County Jail intake records and his Cook County Jail medical records. However, these records have been either lost or destroyed.

While the evidence gathered and reviewed by the Commission has elements both supporting and detracting from Jackie Wilson's claim of torture, on balance, there is sufficient evidence of torture to merit judicial review.

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<sup>3</sup> See *People v. Wilson*, 257 Ill. App.3d 670, 689 (1 Dist. 1993) ("In acquitting defendant for the murder of Officer Fahey and finding him guilty of the murder of Officer O'Brien, the jury obviously rejected the notion that defendant's mere presence established his accountability for all the crimes which occurred at that time.")

Jackie Wilson was also convicted of two counts of armed robbery for the taking of the officers' guns, which were recovered at a location that Andrew Wilson used as a hiding place during the manhunt for the officers' killers.

The major factors supporting Jackie Wilson's claim of torture include:

- Substantial reasons to doubt the veracity of former Assistant State's Attorney Lawrence Hyman's previous testimony about no abuse being inflicted upon Jackie Wilson: Hyman's previous testimony that Andrew Wilson had confessed early in the morning on February 14, 1982, but that Hyman made a "strategic decision" and/or was too busy to take Andrew Wilson's confession until after 5 p.m., defies logic. Additionally, Hyman's failure to conclude his interview of either Jackie or Andrew Wilson by asking how they had been treated by police and whether their interviews were voluntary – a standard operating procedure – makes the possibility of torture of Jackie Wilson more likely. On the very same day of their interrogation, Hyman concluded his interview with another witness, Derrick Martin, by asking him if his statement was voluntary. Recently, an attorney-disciplinary panel found that Hyman deliberately lied to a client and fabricated fake settlement documents to present to her in order to cover up his negligence on her case. This casts doubt on Hyman's character for truthfulness. In conjunction with this evidence, there arises a negative inference from Hyman's refusal to speak with Commission investigators and his statement that he would invoke his Fifth Amendment rights if called to testify about the events of February 14, 1982.
- Pattern-and-practice evidence regarding the interrogating detectives, Thomas McKenna and Patrick O'Hara: Both detectives were accused of at least being present and sanctioning the bagging and beating of another witness, Donald White, in conjunction with the O'Brien/Fahey murder investigation.
- Substantial reasons to doubt the veracity of McKenna's prior testimony regarding Jackie Wilson's treatment: McKenna previously testified he did not hear screams the morning of February 14, 1982. He also testified he was with Jackie Wilson continuously that day, and that he and O'Hara were the only police personnel to enter Jackie Wilson's interrogation room. The testimony about the screams is contradicted by testimony by Andrew Wilson, Jackie Wilson, Wilson family friend Dorris Miller and Chicago Police Detective Sammy Lacey. The testimony regarding officers in the room is contradicted by the officer who arrested Jackie Wilson, Chester Batey, who testified he entered Jackie Wilson's interrogation room twice and even posed a question to Jackie Wilson. McKenna refused to speak with Commission investigators about Jackie Wilson's treatment and said he would invoke his Fifth Amendment privilege against self-incrimination if called to testify by the Commission, from which the Commission draws an adverse

inference about the truthfulness of his prior testimony regarding Jackie Wilson's treatment.

- Overwhelming evidence of torture of Jackie Wilson's co-defendant, Andrew Wilson, by Commander Jon Burge and other detectives under his command (See Appendix I, Evidence Regarding the Torture of Andrew Wilson.): To date, no credible evidence has explained how Andrew Wilson's radiator burns were incurred, other than through abuse at Area 2. Given that Jackie Wilson was accused of the same crime and interacted with some of the same officers and the same prosecutor, Andrew Wilson's torture makes it more likely that Jackie Wilson was also tortured. Additionally, the repeated denials of abuse by every police official and prosecutor involved in Andrew Wilson's interrogation suggests a coordinated effort of dishonesty to cover up the abuse of Andrew Wilson, making it more likely that these same police officials lied regarding the treatment of Jackie Wilson.
- Multiple complaints of police misconduct in connection with the O'Brien/Fahey murder investigation: There were no less than eight complaints made to the Office of Professional Standards and police Internal Affairs by citizens other than the Wilson brothers. Most of these were made prior to or contemporaneously with the Wilsons' arrest and before details of Andrew Wilson's apparent torture became widely known, thus enhancing their credibility. In one, there is documented medical evidence of injuries.
- Testimony of former Detective Sammy Lacey: Lacey testified that he heard screams coming from the second floor of Area 2 on the morning of February 14, 1982, which corroborates the testimony of Jackie Wilson, Andrew Wilson and Doris Miller that Andrew Wilson was screaming that morning at Area 2 due to torture;
- Testimony of Jackie Wilson's arresting officer, Chester Batey: Batey testified that other officers besides McKenna and O'Hara entered Jackie Wilson's interrogation room, thereby contradicting the testimony of McKenna and making more likely Jackie Wilson's contention that multiple officers were present in his interrogation room upon his arrival to Area 2;
- Early allegations of torture: Jackie Wilson first made allegations of being beaten to his attorney the morning of his initial court appearance on February 15, 1982, and made similar allegations in his motion to suppress and suppression testimony.

The major factors detracting from Jackie Wilson's claim of torture include:

- Reasons to doubt Jackie Wilson's statements to the Commission: Jackie Wilson's claim form and interviews included allegations of brief, interrupted electroshock torture, which were not raised at his suppression hearing, nor were they likely raised with his attorney at the time, Richard Kling. This diminishes Jackie Wilson's credibility. Jackie Wilson was also confronted with some internal inconsistencies in his suppression testimony during cross-examination.
- The absence of any physical or medical evidence reflecting injuries to Jackie Wilson; and
- Jackie Wilson's prior criminal history, which diminishes his credibility in general.

## II. PROCEDURAL HISTORY OF TIRC CLAIM

Jackie Wilson's claim was initially decided by the Commission and referred to the Circuit Court of Cook County on May 20, 2013. The claim was one of three decisions withdrawn on September 25, 2013, because the crime victims had not been notified. Notification has subsequently been made, and the matter has been reinvestigated by Commission staff with the assistance of outside *pro bono* counsel.<sup>4</sup>

## III. CRIMINAL PROCEEDINGS

Jackie Wilson was arrested on February 14, 1982 and had an initial appearance before a judge the following day.<sup>5</sup> He was indicted on February 18, 1982 on two counts of murder and two counts of armed robbery.<sup>6</sup> In November, 1982, Judge John Crowley heard testimony on Jackie Wilson's motions to quash his arrest and to suppress his statements to police. On November 5, 1982, Judge Crowley ruled police had probable cause to arrest Jackie Wilson.<sup>7</sup> On November 15, 1982, Judge Crowley denied Jackie Wilson's motion to suppress.<sup>8</sup> Jackie Wilson

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<sup>4</sup> TIRC Executive Director Barry Miller recused himself from this case and was not involved in the staff's investigation or recommendation process.

<sup>5</sup> Record of Proceedings before Judge Thaddeus Kowalski, February 15, 1982, 1-12 (00011073.initial.appearance.pdf).

<sup>6</sup> *People v. Jackie Wilson*, Certified Statement of Conviction/Disposition, 1 (00014265.pdf).

<sup>7</sup> Record of Proceedings before Judge Crowley, November 5, 1982, 551-552 (00006107.tif).

<sup>8</sup> Record of Proceedings before Judge Crowley, November 15, 1982, 1339-1244 (00011071.ruling.mts.pdf).

was tried with his brother, Andrew Wilson, and convicted by a jury on February 4, 1983.<sup>9</sup> Both appealed. On September 30, 1987, The Appellate Court of Illinois, First District, upheld Judge Crowley's finding that Jackie Wilson's statement was voluntary,<sup>10</sup> but reversed his conviction on the grounds that Jackie Wilson was entitled to be tried separately from his brother.<sup>11</sup> Jackie Wilson was retried before Judge Michael B. Getty in the spring of 1989 and again found guilty of the murder of Officer O'Brien and the robbery of both officers.<sup>12</sup> He was acquitted of the murder of Officer Fahey. On November 24, 1993, the Illinois Appellate Court affirmed his conviction.<sup>13</sup> The Illinois Supreme Court denied Jackie Wilson's petition for leave to appeal on April 6, 1994.<sup>14</sup> It does not appear any habeas corpus petition on behalf of Jackie Wilson was adjudicated on the merits in federal court.<sup>15</sup>

#### IV. COMMISSION FRAMEWORK

Section 40(d) of the Illinois Torture Inquiry and Relief Act charges the Commission with conducting inquiries into claims of torture. 775 ILCS 40/40(d). If five or more Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County. 775 ILCS 40/45(c).

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<sup>9</sup> *People v. Jackie Wilson*, Certified Statement of Conviction/Disposition, 3 (00014265.pdf).

<sup>10</sup> The Appellate Court's ruling came five months after the Illinois Supreme Court reversed the appellate court's finding that Andrew Wilson's confession was voluntary. *People v. Andrew Wilson*, 116 Ill.2d 29 (1987). The Appellate Court distinguished Jackie Wilson's circumstances from Andrew Wilson's circumstances on the grounds that Jackie Wilson, unlike Andrew Wilson, had not provided proof of any injuries that required more than a general denial of abuse by the state.

<sup>11</sup> *People v. Wilson*, 161 Ill.App.3d 995 (1987).

<sup>12</sup> *People v. Jackie Wilson*, Docket sheet of common law record (p. 4 of 298-page .pdf) (Binder1.pdf).

<sup>13</sup> *People v. Jackie Wilson*, 257 Ill.App.3d 670 (1993) (rehearing denied January 12, 1994).

<sup>14</sup> *People v. Wilson*, 155 Ill.2d 575 (Ill. 1994) (denied without comment).

<sup>15</sup> Jackie Wilson filed what appears to be a motion staying the time for a habeas filing on May 22, 1997 before Judge Zagel (97-3657), but it was dismissed "as moot" on March 30, 1998 in a minute order. (97-3657 J. Wilson v. Illinois habeas docket.pdf)

It also appears that Jackie Wilson did not file a civil suit about the alleged torture, unlike his brother. Although a Seventh Circuit opinion states that "both filed § 1983 suits contending that they were beaten (in separate incidents) while in custody before their conviction," (*See Wilson v. Williams*, 182 F.3d 562, 564 (1999)), that appears to be a reference to Jackie Wilson's lawsuit against a jail guard for alleged excessive force unrelated to activities at Area 2.

The Commission's Administrative Rules provide that the Commission may find that there is significant evidence of torture that is sufficient for it to conclude that a claim merits judicial review without the Commission also finding that it is more likely than not that any particular fact occurred.<sup>16</sup> If the Commission does find that it is more likely than not that one or more particular facts occurred, it shall so state that in its decision.<sup>17</sup>

## V. FINDINGS OF FACT

1. Andrew Wilson was arrested at approximately 5:15 a.m. on February 14, 1982 at 5301 West Jackson.<sup>18</sup> Andrew Wilson was transported to Area Two headquarters at 9059 South Cottage Grove, arriving at approximately 5:30-6:00 a.m.<sup>19</sup>
2. At approximately 8:05 a.m. on the same day, Jackie Wilson, then 21 years old, was arrested at 5157 South Prairie Avenue.<sup>20</sup> He was transported to Area One police headquarters at 51<sup>st</sup> and Wentworth. Sometime after 8:30 a.m., Area 2 Detectives Dennis McGuire, Lawrence Nitsche, Dale Riordan and Thomas Krippel arrived to transport him to Area 2.<sup>21</sup> McGuire testified it took approximately an hour at Area 1 to take custody of Jackie Wilson, and that they arrived at Area 2 at approximately 10:00 a.m.<sup>22</sup>
3. **Jackie Wilson** testified at his suppression hearing as follows: Detectives Nitsche and McGuire elbowed him repeatedly in the chest during the car ride to Area 2 when he professed not to know about the murders, and that Detective Krippel slapped him in the

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<sup>16</sup> 2 Ill. Admin. Code 3500.385(b)(1).

<sup>17</sup> 2 Ill. Admin. Code 3500.385(b)(2).

<sup>18</sup> Testimony of Sergeant Thomas McKenna on November 8, 1982, before Judge John J. Crowley, p. 627. (00006109.tif).

<sup>19</sup> Testimony of Detective George Karl on November 9, 1982, before Judge John J. Crowley, pp. 917 (00006116.pdf).

<sup>20</sup> Officer C.M. Batey Jr., Star 10096, Jackie Wilson Arrest Report, February 14, 1982 (00006469.tif, p. 3 of 8); see also Testimony of Officer Irving Carl Betts, January 25, 1983, before Judge John J. Crowley, pp. 3492, 3493 (00011032.pdf).

<sup>21</sup> Testimony of Detective Dennis McGuire, November 4, 1982, before Judge John J. Crowley, pp. 405-422 (00006106.tif).

<sup>22</sup> Testimony of Detective Dennis McGuire, November 4, 1982, before Judge John J. Crowley, pp. 405-422 (00006106.tif).

car.<sup>23</sup> At Area 2, he was immediately taken to a room filled with 12-16 plainclothes police officers who ignored his requests for a lawyer, which included presenting them with the card of his attorney, R. Frederic Solomon. An unspecified officer announced that every time he lied, they would do “this,” and then struck Jackie Wilson in the head with a telephone book. When Jackie Wilson said he did not want to talk, about six officers hit him with a book, poked him and kicked him. Another officer interrupted the beating, and read him his rights. During this time, he heard his brother yelling, sounds of scrambling and chairs being kicked. Jackie Wilson felt that if he didn’t talk, he would suffer the same abuse. He was questioned and intermittently beaten for an hour or two when his answers didn’t satisfy officers. He was slapped, kicked, shaken, kicked in the groin, hit in the head with a book and had his hands twisted and stepped on.<sup>24</sup> At one point, officers held his arms out to the side while another placed his revolver in Jackie Wilson’s mouth, cocking and uncocking it repeatedly.<sup>25</sup> McKenna advised O’Hara, who had slapped Jackie Wilson, not to injure his face. Once officers were satisfied with the confession, McKenna told Jackie Wilson to tell the Assistant State’s Attorney the same thing, or officers would politely ask the ASA to leave and they would start all over again. After making the court-reported statement to the ASA, Jackie Wilson said he initially refused to sign or initial the court-reported statement when it was presented to him and he again asked for his lawyer. ASA Hyman stepped out of the room, saying he would call Jackie Wilson’s attorney. At that point, O’Hara returned and, in McKenna’s presence, threatened to break Jackie Wilson’s fingers if he didn’t sign. Jackie Wilson signed and initialed the statement. Jackie Wilson initially testified that he was “positive” he had not seen his brother on February 14, 1982, but later corrected himself when reminded that he had appeared in a police lineup with Andrew Wilson on the afternoon of February 14, 1982.<sup>26</sup> (See Exhibit XX, Jackie Wilson Suppression Testimony).

4. Detective **Thomas McKenna** testified at Jackie Wilson’s suppression hearing as follows: Jackie Wilson was never hit or abused by officers, Jackie Wilson did not request a lawyer, Jackie Wilson was read his Miranda rights at each interview, Detectives Patrick

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<sup>23</sup> Testimony of Jackie Wilson, November 8, 1982, before Judge John J. Crowley, pp. 723-795 (00006110.TIF). Wilson did not identify the detectives by name, but by position in the car. Detective McGuire testified to the officers’ relative positions in the car. All detectives denied striking Jackie Wilson.

<sup>24</sup> Jackie Wilson claimed this caused his hands to swell, and said that was why his initials appeared different on each page of his court-reported statement.

<sup>25</sup> In a September 18, 2014 interview with Commission representatives, Jackie Wilson said he overheard one of the officers whisper to the officer who was using the revolver to take the bullets out of the gun so that if he slipped while uncocking the revolver, Jackie Wilson would not be killed.

<sup>26</sup> Testimony of Jackie Wilson, November 8, 1982, before Judge John J. Crowley, pp. 723-795 (00006110.tif).



O'Hara and Thomas McKenna were the only police officers who questioned Jackie Wilson or entered his interview room (besides the Assistant State's Attorney Lawrence Hyman and the court reporter, Michael Hartnett), that no screams were heard at Area 2 the morning of February 14, 1982, and that McKenna did not leave Jackie Wilson's sight the entire time Jackie Wilson was at Area 2 until Jackie Wilson was taken to Area 1 to participate in a police lineup.<sup>27</sup> McKenna additionally testified that he and O'Hara first entered Jackie Wilson's room, the Case Management Office, at approximately 10:15 a.m. and at 10:20 a.m. Jackie Wilson gave an oral statement lasting 20-25 minutes. At 11:45 a.m., McKenna and ASA Hyman spoke with Jackie Wilson for a second time for approximately 15 minutes. At 12:20 p.m., Jackie Wilson gave his court-reported statement to McKenna, Hyman and court reporter Michael Hartnett.<sup>28</sup>

5. Assistant State's Attorney **Lawrence Hyman** testified at Jackie Wilson's suppression hearing as follows: He first entered the Case Management Office around 10:45-11:00 a.m. and took an oral statement from Jackie Wilson with both McKenna and O'Hara present. Lunch was brought in for Jackie Wilson, Hyman, O'Hara and McKenna around 11:30-11:45 a.m. and after lunch, Jackie Wilson gave his court-reported statement at 12:20 p.m. While Jackie Wilson was interviewed, Andrew Wilson was in a nearby interview room approximately 35 feet away. Hyman heard no screams. Hyman acknowledged he did not ask either Jackie Wilson or Andrew Wilson how they had been treated by police, despite Andrew Wilson having a cut underneath his eyebrow and irritation to his eye.<sup>29</sup>
6. At the Chicago Police Board hearings, **Hyman** testified as follows: He was aware upon arriving at Area 2 on February 14, 1982 that Andrew Wilson had confessed to shooting Fahey and O'Brien, and that he had a court reporter available as early as 10:00 a.m. to take Andrew Wilson's confession. He first took Jackie Wilson's confession and Derrick Martin's statement and waited for Andrew Wilson to be identified in order to get as much evidence against Andrew Wilson before interviewing him. On cross-examination, he acknowledged that once an assistant state's attorney arrives at a police station where a suspect has confessed, "he wants to get the information [statement] as quickly as possible" and that it was often common for defendants to change their mind about

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<sup>27</sup> Testimony of Detective Sergeant Thomas McKenna, November 4, 1982, before Judge John J. Crowley, pp. 448-478 (00006106.tif).

<sup>28</sup> Testimony of Detective Thomas McKenna, November 4, 1982, before Judge John J. Crowley, pp. 448-478 (00006106.tif)

<sup>29</sup> Testimony of Lawrence Hyman, November 5, 1982, before Judge John J. Crowley, pp. 589-621 (00006108.tif); Testimony of Lawrence Hyman, January 26, 1983, before Judge John J. Crowley, pp. 3638 (00011087.pdf).

making a statement. Hyman testified it was a “strategic decision” to wait until 6:05 p.m. before taking Andrew Wilson’s court-reported statement.<sup>30</sup>

7. An attorney disciplinary advisory body recently recommended that Lawrence Hyman be suspended from the practice of law for 30 days for lying to a client about her case and for fabricating settlement documents to present to her in furtherance of that deception. Hyman did not deny misleading the client.<sup>31</sup>
8. Former Area 2 Detective **Sammy W. Lacey** testified at Jon Burge’s criminal trial on June 9, 2010, as follows: He arrived at Area 2 headquarters on February 14, 2014 between 8:30 and 9:00 a.m. As he got out of his car, he heard someone screaming for help, as if they were in “deep distress.” Inside, after walking up the stairs, he observed Andrew Wilson sitting on the floor handcuffed. He did not observe anything wrong with Andrew Wilson at that time. On cross examination, he stated that the screaming was coming from the second floor.<sup>32</sup>
9. Patrolman **Chester Batey**, the officer who arrested Jackie Wilson, testified in a civil suit deposition on February 11, 1989, as follows: Jackie Wilson made a statement to him at District 2 that his brother had shot the officers and he was just the driver. On the day of the arrest, Batey went to Area 2 to make out a report. During a time period which he estimates was between noon and 4:00-5:00 p.m., or from 2:00 to 5:00 p.m., he went into both Jackie Wilson’s interview room and Andrew Wilson’s interview room, and re-entered Jackie Wilson’s room a second time for 10-15 minutes and asked him a question about why Jackie had lied to him at the arrest scene by telling officers he was not Jackie Wilson. Batey believed both Wilsons remained at Area 2 the entire time he was there, but acknowledged they could have been brought out while he was in the common room,

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<sup>30</sup> Testimony of Lawrence Hyman, February 21, 1992, before the Chicago Police Board Hearing Officer Berland (00009386.Hyman.searchable.pdf).

<sup>31</sup> See *In re Lawrence Howard Hyman, Report and Recommendation of the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission*, No. 2013PR00110 (September, 2014) (“The evidence convinced us that Respondent’s misrepresentations were not the product of a mistake. Instead, those misrepresentations were part of an intentional and purposeful effort by Respondent to conceal his original neglect of [his client’s] case.”) (2014.9.19.In.re.Hyman.pdf).

The ARDC recommended the lengthy suspension in spite of the mitigating evidence Hyman presented – the testimony of four current or retired Circuit Court judges regarding his reputation for honesty. *Id.* at 12-13.

<sup>32</sup> Testimony of Sammy W. Lacey, June 9, 2010, before Judge Joan Humphrey Lefkow, PageID 5150-5239 (2010.6.09 transcript Raba Lacey.pdf).

because he wasn't "zeroed in" on the two interrogation rooms in which they were placed.<sup>33</sup>

10. **Lawrence Hyman** refused to speak to a Commission investigator, and told the Commission, in writing, through counsel, that he would invoke his Fifth Amendment right against self-incrimination if called to testify.<sup>34</sup> Mr. Hyman was advised, in writing via his counsel, that failure to speak with Commission investigators could lead to an adverse inference being drawn about his silence. Hyman also invoked his Fifth Amendment rights when approached by the Special State's Attorney investigating claims of torture by Commander Jon Burge and his officers.<sup>35</sup>
11. **Thomas McKenna** also refused to speak to a Commission investigator, and indicated in writing, through counsel, that he would invoke his Fifth Amendment rights if called to testify.<sup>36</sup> Mr. McKenna was advised, in writing via his counsel, that failure to speak with Commission investigators could lead to an adverse inference being drawn about his silence. McKenna also indicated at the criminal trial of Jon Burge that he would invoke his Fifth Amendment right if called to testify in that proceeding. The invocation was challenged by Burge's attorneys, who noted that McKenna had already testified numerous times about Andrew Wilson.<sup>37</sup> Judge Joan Lefkow, however, ruled McKenna could invoke the Fifth Amendment because "the hazards of [self-]incrimination [are] substantial and real."<sup>38</sup>

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<sup>33</sup> Testimony of Chester Batey in deposition taken February 11, 1989, pp. 1-150 (00005381.TIF, 00005382.TIF).

<sup>34</sup> In a May 15, 2014 letter Lawrence Hyman's attorney, Ralph E. Meczyk, wrote, "Lawrence Hyman[] will respectfully assert his Fifth and Sixth Amendment rights to the United States Constitution to any questions propounded at his deposition. Of course, you are aware that the Constitution protects everyone, especially innocent people from the need to answer questions, even if a truthful answer might be used to create a misleading impression that he was somehow involved in a crime he did not commit." (2014.5.15.HYMAN.letter.taking.FIFTH.pdf).

<sup>35</sup> Edward J. Egan and Robert D. Boyle, *Report of the Special State's Attorney*, 53-54 (July, 2006).

<sup>36</sup> In an August 14, 2014 letter, McKenna's attorney, Andrew M. Hale wrote, "Please [] be advised that, if called to testify regarding the arrest and interrogation of Jackie Wilson on or about February 14, 1982, Mr. McKenna would invoke his Fifth Amendment rights and decline to answer any question regarding those events." (2014.8.14.Ltr.from.McKenna.taking.FIFTH.pdf). Mr. Hale had previously appeared before the Commission on September 25, 2013 and urged it to interview detectives and prosecutors as a matter of course during its investigations.

<sup>37</sup> See *U.S. v. Burge*, Defendant's motion, Document No. 172, 4/01/2010 (Burge.motion.to.conduct.inquiry.re.Burge&Hyman's.use.of5th.pdf).

<sup>38</sup> See *U.S. v. Burge*, 08-CR-846, Redacted Order, Document No. 261, Filed June 2, 2010.

12. **Jackie Wilson** was interviewed twice by Commission representatives, on April 25, 2012 and again on September 18, 2014. Although his claims of torture have remained generally consistent, there were new allegations raised in those interviews. In both Commission interviews, he claimed that in addition to being struck, beat with phone books and threatened with a gun, officers produced a box-like device and administered electric shocks to him. In the April 25, 2012 interview, Jackie Wilson said the shocking was an abbreviated session that was halted when one of the officers warned others not to leave any marks. Jackie Wilson made no mention of electric shock in either his written motion to suppress or his testimony at the suppression hearing. In his suppression testimony, he said he gave attorney R. Frederic Solomon's business card to a police officer. In his April 25, 2012 interview, Jackie Wilson said he gave it to an assistant state's attorney because he knew it would be fruitless to give it to police.<sup>39</sup>
13. **Richard Kling**, Jackie Wilson's attorney at both his suppression hearing and his two criminal trials, spoke with a TIRC investigator after Jackie Wilson signed an attorney-client waiver. Kling did not recall Jackie Wilson ever mentioning electroshock abuse, and believes that if Jackie Wilson had mentioned it, he would have featured such allegations prominently in his motion to suppress.<sup>40</sup>
14. Prior to the murders of Officers O'Brien and Fahey, Jackie Wilson and Andrew Wilson were arrested on December 7, 1981 for the December 3, 1981 armed robbery of World Camera at 11511 South Michigan Avenue. The police report for that incident indicates that when an Assistant State's Attorney advised the brothers of their Miranda rights in that case, Andrew Wilson invoked his right to silence and was not questioned further. Jackie Wilson waived his right to silence, and claimed he was at home at the time of the robbery. Jackie Wilson did not confess to the robbery.<sup>41</sup>

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<sup>39</sup> See TIRC audio recordings of April 25, 2012 and September 18, 2014 interviews of Jackie Wilson. (2012.4.25 Jackie Wilson.MP3, 2014.9.16 Wilson Pt. 1.MP3, 2014.9.16 Wilson Pt. 2.MP3)

<sup>40</sup> Richard Kling Interview Report, August 8, 2014, at 2.

<sup>41</sup> Chicago Police Supplementary Report, RD # C 457 495, report completed December 13, 1981, pp. 1-6 (J.Wilson.World.Camera.PD.rpt.2.pdf).

Although the court records for the camera store robbery were not obtained in this investigation to determine if the Wilsons were convicted for the World Camera robbery, Jackie Wilson's alibi would appear to be a false exculpatory statement. One of the stolen cameras was recovered at the Wilson home and at the sentencing hearing for the O'Brien and Fahey murders, a store clerk, Robert Rotoloni, identified both Jackie and Andrew Wilson as the men who robbed World Camera. See Testimony of Robert Rotoloni before Judge John J. Crowley on February 7, 1983, 4620-4627 (00011094.pdf); See also Supplemental Report of Officer R. Stake, Star No. 15238, Dec. 7, 1981, RD No. C 457-495, p. 3 of 13-page pdf (J.Wilson.World.Camera.PD.rpt.2.pdf).

15. In a July, 1989 deposition, Donald White testified as follows: On or about February 12-13, 1982, he was questioned about the O'Brien/Fahey murders by Detectives O'Hara, McKenna, Katalinic and Hill and two other unidentified officers. A plastic bag was placed over his head by Hill and he was beaten by what felt like at least four people. He said he did not hear a door open during the bagging/beating, implying that O'Hara and McKenna were at least present in the room and aware of the bagging and beating. He was bagged and beaten two more times and had a gun placed against the side of his mouth. Threatened with another beating, he gave a statement to McKenna and O'Hara implicating the Wilson brothers in the O'Brien/Fahey murders. White said much of the resulting statement was correct, but that it incorrectly stated that Jackie Wilson left his house with a gun in his waistband, when it was Andrew Wilson who had the gun. White testified that detectives also omitted his contention that Derrick Martin had told White that Derrick Martin was in the back of the Wilsons' car when Andrew Wilson shot the two officers.<sup>42</sup>

16. Detective McKenna has faced other allegations of misconduct:

- a) In 2009, McKenna, Burge and a number of other officers were sued by Alton Logan, who alleged that they had deliberately withheld exculpatory evidence during his trial for the February 7, 1982 murder of off-duty Cook County Department of Corrections Sergeant Lloyd Wickliffe. Wickliffe was moonlighting as a security guard at a South-side McDonalds and was killed during a robbery. Logan was convicted of the crime and imprisoned. Logan alleged in the lawsuit that McKenna and others withheld that witness Donald White had told McKenna that Andrew Wilson, not Logan, had committed the murder.<sup>43</sup> During the manhunt for Andrew Wilson after the Fahey/O'Brien murders, police searched Andrew Wilson's hideout in a beauty parlor and found Fahey's and O'Brien's service revolvers as well as a shotgun.<sup>44</sup> A police lab report, delivered to Jon Burge, identified that shotgun as the same one used

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<sup>42</sup> White, who was incarcerated at the time he gave his deposition in the civil suit, was paid \$1,050 by Wilson's attorneys so he and his wife could relocate out of state, put a deposit on an apartment and pay the first month's rent. He stated he feared for his life in Illinois because detectives who had interrogated him were "still out there." Deposition of Donald White, July 14, 1989, *Andrew Wilson v. City of Chicago*, 86 C 2360, 5,6, 57-58. (00000267.searchable.pdf). Prior to Wilson's criminal trial, White (who testified against the Wilsons before the grand jury) and his family had similarly been housed and his expenses paid by the Cook County State's Attorney for protection from the Wilson brothers because he feared people viewed him as a "stooley." *Id.* at 71.

<sup>43</sup> *Logan v. City of Chicago*, 891 F.Supp.2d 897.

<sup>44</sup> *People v. Wilson*, 254 Ill.App.3d 1020, 1026 (1993).

in the Wickliffe murder.<sup>45</sup> No charges against Andrew Wilson were ever filed for Wickliffe's murder. When Andrew Wilson died on November 19, 2007, his attorneys came forward and revealed that Andrew Wilson had confessed to them that he had committed the Wickliffe murder.<sup>46</sup> On September 4, 2008, Cook County Court Circuit Judge James Schreier vacated Logan's conviction based on actual innocence.<sup>47</sup> McKenna invoked his Fifth Amendment privilege in the civil lawsuit and refused to discuss the substance of his interrogation of White in the Wickliffe investigation.<sup>48</sup> The City of Chicago eventually settled the lawsuit for \$10.25 million.<sup>49</sup>

- b) In a separate civil lawsuit, McKenna was accused of malicious prosecution but was ultimately found not liable. Michael Evans sued McKenna and others, alleging that they had harassed a witness repeatedly over weeks until she named Evans as a suspect of the 1976 rape and murder of 9-year-old Lisa Cabassa.<sup>50</sup> Evans was convicted in 1976 of the crime, but the conviction was reversed on the grounds that the state had improperly withheld the fact that the star prosecution witness had received monetary payments.<sup>51</sup> Evans was convicted the following year on retrial. After spending 27 years in prison, Evans obtained DNA evidence showing neither Evans nor his co-defendant, Paul Terry, were the donors of semen recovered from the victim.<sup>52</sup> The conviction was vacated, the state's attorney declined to retry Evans, and he was granted a gubernatorial pardon based on innocence.<sup>53</sup> During discovery in the Evans'

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<sup>45</sup> See report of Sgt. Joseph R. Celovsky, Firearms Examiner, February 13, 1982 (Def. Officers SOF Ex 31, CPD report linking shotgun to Wickliffe murder.pdf).

<sup>46</sup> *Logan v. City of Chicago*, 891 F.Supp.2d 897, at 900.

<sup>47</sup> *Id.* at 900.

<sup>48</sup> *Id.* at 903 (“[A]t least one defendant, McKenna, has refused to answer questions regarding interrogating White about the McDonald’s crime on January 11, 1982. The negative inference that flows from defendants’ silence on this issue actually bolsters White’s testimony and plaintiff’s claim that defendants suppressed exculpatory evidence.”)

<sup>49</sup> See Chicago City Committee on Finance Recommendation to City Council, January 17, 2013; see also Speilman, Fran, *Chicago to pay \$10.25 million in another Burge case*, Chicago Sun-Times, January 14, 2013.

<sup>50</sup> See *Evans v. City of Chicago*, Amended Complaint, at 5.

<sup>51</sup> *Id.* at 7.

<sup>52</sup> *Evans v. City of Chicago*, 513 F.3d 735, 738 (2008).

<sup>53</sup> *Id.*

civil suit, McKenna testified for the first time that, prior to Evans' second trial, a semen analysis had been performed by authorities that had eliminated Evans as a donor.<sup>54</sup> A jury decided McKenna, other officers and the City had not maliciously prosecuted Evans or violated his Due Process rights.<sup>55</sup>

17. During the time police were investigating the Fahey/O'Brien murders, a number of citizens filed complaints regarding police investigation methods. While many involved allegations of searches conducted without a warrant and damage to property, others alleged abuse of witnesses or suspects in the Fahey/O'Brien murder investigation. (See Exhibit D.) The complaints included the following:
- a) Sylvia Logan alleged on February 11, 1982 that unknown officers broke down a basement door at her apartment building that day at 6450 S. Eggleston without a warrant while searching for the Fahey/O'Brien killers;<sup>56</sup>
  - b) Alfonso Pinex and his mother complained on February 12, 1982 that officers who arrested him on February 9, 1982 to take him in for questioning about the officers' murder hit him in the head with a flashlight and pistol, choked him and slammed the police car door on his legs. The mother reported that a police sergeant apologized to her but explained that someone had claimed Pinex had killed the officers and they had to investigate;<sup>57</sup>
  - c) Donald Judkins alleged on February 10, 1982 that on February 9, 1982, two white male plainclothes officers entered an establishment at 7203 S. Halsted St. with guns drawn, searched everyone present and struck him in the head with a fist;<sup>58</sup>
  - d) Eula Owens complained on February 12, 1982 that four male white plainclothes police officers searched her home at 6843 S. Carpenter that day without a warrant and arrested her son, Nick Owens, striking him several times about his body when he

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<sup>54</sup> *Id.* 513 F.3d at 749-750 (J. Williams, dissenting) Judge Williams noted that the defense theory was that McKenna was mistaken and remembering incorrectly; *see also* Deposition of Thomas McKenna, July 8, 2006, *Evans v. City of Chicago*, 04 C 3570, 111 (Thomas McKenna deposition.pdf).

<sup>55</sup> *Evans v. City of Chicago*, 513 F.3d 735 (2008).

<sup>56</sup> *See* CR No. [illegible] (IAD.OPS.cases.3.pdf).

<sup>57</sup> *See* CR No. 123323 (IAD.OPS.cases.6.pdf).

<sup>58</sup> *See* CR No. 123293 (OPS.1.pdf).

refused to get into a police car. Police told Owens her son was being taken for questioning about the police shootings.<sup>59</sup> Subsequent investigation by the Office of Professional Standards revealed that Nick Owens had been taken into custody by Detectives John Gallagher and David Dioguardi. They reported that Owens' injuries occurred when he tried to escape their custody.<sup>60</sup>

- e) Larry Milan complained on February 13, 1982 that numerous unidentified police officers kicked him in the chest, slapped him in the face and punched him in the stomach on February 9, 1982 at his home at 8005 S. Morgan St. while questioning him about the killings of the police officers. In a related complaint, Walter Johnson alleged he was struck on February 10, 1982 at Area 1 by two white plainclothes officers who also threw him to the floor, placed a plastic bag over his head, kicked and stomped on him and placed a gun to his head.<sup>61</sup>
  - f) Kenneth Harris complained on February 14, 1982 that he was stopped that day while walking to the store in the 118<sup>th</sup> block of South Peoria by five unknown officers (some in uniform and some in plainclothes) who handcuffed him to a car, struck him, kicked him in the hands, legs and groin and punched him in the face while questioning him about one of the Wilson siblings. Harris was evaluated by a doctor and diagnosed with a skin abrasion and contusion to the right hand as well as abrasions to the upper and lower lips.<sup>62</sup>
18. According to police arrest records, Jackie Wilson has multiple convictions: In September, 1977, he was arrested for burglary, convicted and sentenced to probation. In April, 1978, he was again arrested for burglary, convicted, and sentenced to three years in prison; he was paroled on March 21, 1980. In June of 1980, he was arrested for theft, convicted and sentenced to two years in prison; he was paroled on March 6, 1981. He had numerous other arrests.<sup>63</sup>

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<sup>59</sup> See CR 123320 (OPS.2.pdf).

<sup>60</sup> See CR 123320 (OPS.8.pdf). It is believed the reference to Det. Diogiardi (sic) is a misspelling of Detective David Dioguardi's name. Dioguardi worked under Jon Burge at Area 2.

<sup>61</sup> See CR 123338 (OPS.2.pdf).

<sup>62</sup> See CR No. 123350 (OPS.10.pdf).

<sup>63</sup> Criminal History of Jackie F. Wilson (J.Wilson.PD.47.j.wilson.rap.sheets.pdf). See also Certified Statements of Conviction, 78-I-4521 and 77-17172 (00008900.tif).



19. Commission staff located impounded lineup photographs of Jackie and Andrew Wilson taken on February 14, 1982. (See Exhibit E) The photographs do not appear to demonstrate any visible injuries to Jackie Wilson's face.<sup>64</sup> The Circuit Court Clerk's office could not locate the Polaroid photograph of Jackie Wilson taken by the court reporter who took his statement.
20. Family members of Officers O'Brien and Fahey commented on the Commission's investigation in writing (See Exhibit F) and orally at Commission meetings in 2013 and 2014.<sup>65</sup>
21. A number of additional witnesses were interviewed by a Commission investigator.
  - a) Barbara Steinberg, the public defender present at the Wilson brothers' initial appearance, remembered details regarding Andrew Wilson, but not Jackie Wilson.
  - b) Robert Loeb, the assistant state's attorney at the same hearing, recalled seeing injuries to the Wilson brother who was represented by Dale Coventry. (Court transcripts indicate Andrew Wilson was represented by Coventry.) He did not recall details about the other Wilson brother.
  - c) Dale Coventry, Andrew Wilson's criminal attorney, did not offer any significant details about Jackie Wilson.
  - d) R. Fredric Solomon, Jackie Wilson's attorney at his initial appearance, recalled speaking to Jackie Wilson at the 26<sup>th</sup> and California courthouse the morning of his first appearance and that Jackie Wilson told him he had been beaten. Solomon replied to Jackie Wilson that he didn't see a mark on him. Jackie Wilson replied that officers had used a phone book. Solomon could not recall many details about that

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<sup>64</sup> The Commission's first determination referenced a photograph of Jackie Wilson showing facial injuries. This appears to have been a mistaken reference to pictures of Andrew Wilson, who had a prominent eye injury in lineup photographs. The error stemmed, in part, from a document subpoenaed from the Office of Special Prosecutor in which the names of Andrew and Jackie Wilson were transposed. See OSP document 00002613, a summary of *People v. Jackie Wilson*, 139 Ill. App. 3d 726 (1985). The summary reads, "[i]t appears that the only physical evidence, as to Jackie Wilson, is a cut over his eye." The Polaroid photograph of Jackie Wilson, taken by the court reporter after Jackie Wilson's statement, could not be located by Circuit Court Clerk personnel. However, as noted, the lineup photographs do not demonstrate any facial injuries. Additionally, R. Fredric Solomon, Jackie's attorney at his initial appearance, told a Commission investigator that Jackie Wilson had no marks on his face at the initial appearance.

<sup>65</sup> See audio recordings and minutes of meetings of TIRC meetings on September 25, 2013 and January 22, 2014 (2013.9.25 Family.testimony begins at 31.30 .MP3), (2014.1.22.Family.testimony.MP3), (Meeting Minutes September 25, 2013.pdf), (Minutes 2014.1.22.pdf).

meeting, but does not believe Jackie Wilson recounted the story of Jackie Wilson trying to offer police Solomon's business card during his interrogation. Solomon did say he would have given Jackie Wilson a business card in the course of his prior representation of Jackie Wilson on the camera store robbery.<sup>66</sup>

- e) Michael Hartnett, the court reporter who took Jackie Wilson's statement to police noted the event occurred many years ago and that reviewing transcripts of his prior testimony would likely yield more information than he could now provide. He did not observe any marks on Jackie Wilson, observe any abuse, hear any threats or hear any cries that morning. Hartnett was not in the room when the statement was read back to Jackie Wilson. In general, Hartnett said, when the person giving a statement was a defendant, assistant state's attorneys usually asked them how they had been treated by police.<sup>67</sup>
- f) Diane Panos, a lawyer who had a conversation with Jon Burge in the late 1980s at a bar, was interviewed about her 2010 testimony at the trial of Jon Burge. At the trial, she testified that Burge talked about the Wilson brothers and that Burge said "that they had been beaten during the conversation ... in order to secure a confession."<sup>68</sup> In her July 10, 2014 interview with a TIRC investigator, Ms. Panos said Burge had referenced the Wilson brothers, but never mentioned either by their first names. She said Burge had not mentioned any specific names of defendants who had been mistreated, but that his conversation had been more of a generalization about the treatment of defendants.<sup>69</sup> Ms. Panos did not speak long with the TIRC investigator, sounded irritated at being contacted about the matter, said it had already cost her thousands of dollars and that she continues to be asked the same questions over and over.

## VI. WEIGHING OF EVIDENCE

- A. There are substantial reasons to doubt the official police and prosecutorial accounts of Jackie Wilson's interrogation and treatment.

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<sup>66</sup> Fredric Solomon Interview Report, July 17, 2014. Like Hyman, Solomon has faced ARDC discipline. He was disbarred on consent in 1972, reinstated in 1975, and again disbarred on consent in 1986. The ARDC website does not further describe the nature of the disciplinary actions.

<sup>67</sup> Michael Hartnett Interview Report, May 12, 2014.

<sup>68</sup> *People v. Jon Burge*, No. 08-CR-846, ROP, June 10, 2010, PageID # 5254.

<sup>69</sup> Diane Panos Interview Report, July 10, 2014 (Witness Interview Report\_Diane Panos [7-10-14].pdf)

- (i) There are substantial reasons to conclude that prior testimony by Lawrence Hyman, the Assistant State's Attorney who questioned Jackie Wilson, was not truthful.<sup>70</sup> His failure to inquire of Jackie and Andrew Wilson as to their treatment by police and voluntariness of their statement, on the very same day he inquired about the voluntary nature of another witness' statement, suggests not an oversight but deliberate avoidance of an inconvenient topic. His testimony that Andrew Wilson confessed early in the morning, but was not interviewed formally until the evening, defies common sense. State's attorneys want to memorialize confessions as quickly as possible. In light of this and other evidence, Hyman's invocation of his Fifth Amendment right against self-incrimination with this Commission and the Special State's Attorney<sup>71</sup> raises a negative inference about the truthfulness of Hyman's earlier testimony about the events concerning Jackie Wilson.<sup>72</sup> Additionally, Hyman's recent admission to an attorney oversight body of lying to a client to disguise his negligence in pursuing her case, complete with phony settlement documents, tends to undermine his credibility in general.
- (ii) There are substantial reasons to discount prior testimony from Officer McKenna. McKenna was absolute in his suppression-hearing testimony that he remained with Jackie Wilson at all times at Area 2, without leaving for bathroom breaks or meals, and that no one but O'Hara, McKenna, Hyman and Hartnett entered Jackie Wilson's interrogation room. That is contradicted by Officer Chester Batey, who said he entered both Wilson brothers' rooms, even asking Jackie Wilson a question.<sup>73</sup> McKenna's contention that no screams were heard is contradicted by the testimony of Area 2 Detective Sammy Lacey, who testified he heard screams

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<sup>70</sup> The Special State's Attorney concluded that Hyman lied when he denied Andrew Wilson told him police had torture him, expressed doubt about his explanation of his failure to ask Andrew Wilson about his eye injury, and generally expressed disbelief in his denial of Andrew Wilson's testimony. *See Report of the Special State's Attorney*, at 54, 60 and 62.

<sup>71</sup> Egan, Edward & Boyle, Robert, *Report of the Special State's Attorney*, at 53.

<sup>72</sup> *See People v. Cortez Brown*, 90-CR-23997, Report of Proceedings of May 22, 2009, at 5 (J. Crane)(taking into account failure of detectives to testify at third-stage post-conviction hearing) (Cortez Brown. ruling on 3<sup>rd</sup>-stage hearing.pdf). *See also Logan v. City of Chicago*, 891 F.Supp.2d 897, 903 (finding police officer's silence in civil suit created negative inference bolstering opposing witness' testimony).

<sup>73</sup> Batey's window for when he entered the interrogation room (Sometime between 2:00 and 5:00 p.m.) was broad and includes both times when the Wilson brothers were at Area 2 and times when other testimony suggests they had departed for Area 1 for a lineup (generally after 3:00 p.m.). However, Batey also testified that he wasn't focused on the brothers' interrogation rooms and they could have departed at some point without his noticing.

at Area 2 that morning around 8 or 9 a.m. Combined with this evidence, McKenna's refusal to speak to a Commission investigator and his statement in writing that he would invoke his Fifth Amendment privilege if called to testify by the Commission leads to a negative inference about the truthfulness of McKenna's previous testimony. That negative inference is only reinforced by McKenna's reliance on the Fifth Amendment at Burge's criminal trial. Also diminishing McKenna's credibility (both in general and in matters related to the Wilson brothers' case) is his Fifth Amendment silence in the Alton Logan case about his interview of Donald White that was allegedly exculpatory to Logan. Notably, the Logan case was intricately intertwined with this case in that both took place within weeks of each other, the murder weapon was found in Andrew Wilson's hideout, it is highly likely that Andrew Wilson was the actual murderer of Wickliffe rather than Logan, and detectives are alleged to have known this.

- (iii) While not dispositive, Donald White's testimony that McKenna and O'Hara (Wilson's interrogators) at least acquiesced in his beatings and baggings during the course of the Fahey/O'Brien weighs against them.<sup>74</sup>
- (iv) The evidence is overwhelming that Andrew Wilson was tortured at Area 2 by Commander Jon Burge and detectives under his command. (Appendix A of this determination gives a more in-depth examination of the evidence in regards to Andrew Wilson.) Aside from injuries to Andrew Wilson's right eye (allegedly incurred during the arrest), no police officer has given a credible explanation as to how Andrew Wilson's injuries were received.<sup>75</sup> Even police testimony about the source of the eye injury is conflicted.<sup>76</sup> Additionally, all investigating officers

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<sup>74</sup> While complaints of physical abuse and coercion against the accused officer are allegations and not judicial findings, they are nevertheless relevant in deciding whether abuse occurred in a specific case. *People v. Patterson*, 192 Ill.2d 93, 114-15 (Ill. 2000); *People v. Cannon*, 293 Ill. App.3d 634, 640; *People v. King*, 192 Ill.2d 189, 198-200 (2000).

<sup>75</sup> Officer Mario Ferro testified that Andrew Wilson slipped and fell getting into the prisoner transport van at Area 2 prior to being taken to 11<sup>th</sup> and State, but he also testified that Andrew Wilson was not injured in that fall. See Deposition testimony of Mario Ferro on January 6, 1989, p. 19 (00006052.TIF).

<sup>76</sup> McKenna and O'Hara and all other Area 2 officers participating in Andrew Wilson's arrest testified at the suppression hearing that Andrew Wilson received his cut over the eye in the course of being arrested and taken to the floor. However, Deputy Superintendent Joseph McCarthy testified at the suppression hearing that he did not observe any marks on Wilson's face resulting from the takedown. (McCarthy Testimony, November 9, 1982, pp. 851-866. (00006115.pdf and 00006116.pdf) Andrew Wilson testified he received the eye injury at the station. McKenna testified Andrew Wilson refused treatment for the eye injury, (McKenna Testimony, November 8, 1982, 638-639 (00006109.pdf)) but both the existence of the eye injury and the contention that Andrew Wilson refused treatment for it is nowhere in McKenna's final report. The Chicago Police Board specifically rejected the

who testified, including McKenna and O'Hara, have universally denied mistreatment or knowledge of mistreatment of Andrew Wilson, but they agree he did not have most injuries upon being taken into custody. The only credible explanation for those injuries is that the injuries were police-inflicted, and that a number of officers lied about his receipt of injuries. Additionally, testimony by McKenna and O'Hara that Andrew Wilson confessed immediately upon arriving at Area 2 is highly suspect, given the injuries to Andrew Wilson, and the 11-hour expanse between this alleged confession and its memorialization. This Commission specifically finds that, by a preponderance of the evidence, it is more likely than not that Burge and officers under his command tortured Andrew Wilson on February 14, 1982.<sup>77</sup> That finding, and the totality of the Andrew Wilson evidence suggests a willingness by McKenna and O'Hara<sup>78</sup> to at least countenance torture of Andrew Wilson and coordinate testimony to conceal it, and makes greater the possibility of torture of Jackie Wilson and false testimony to conceal it.

- (v) Jackie Wilson's response to his arrest and interrogation in the World Camera robbery, which occurred two months before the O'Brien/Fahey murders, was to give an apparent lie by providing investigators with an apparently false alibi. Again, while not dispositive, Jackie Wilson's extensive arrest record<sup>79</sup>, and his response to interrogation in the World Camera case does not suggest that he would freely admit to a crime. This suggests something else, such as physical abuse, may have motivated his confession in this case.
- (vi) The complaints by Syliva Logan, Alphonso Pinex, Donald Judkins, Eula Owens, Larry Milan, Walter Johnson and Kenneth Harris of heavy-handed police tactics and torture during interrogations in the course of the Fahey/O'Brien investigation are, once again, not dispositive, but suggest that Andrew Wilson was not the only recipient of police abuse in the investigation, and that Jackie Wilson may have received similar, if less intense, abuse than his brother did. The Commission notes that at least one of these complaints, that of Kenneth Harris, was corroborated by medical records. Many of these complaints were filed within days

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contention that Andrew Wilson's eye was injured during the arrest (*see Findings and Decision*, 33 (PoliceBoardFindingsandDecisions.pdf)).

<sup>77</sup> See 2 Ill. Adm. Code 3500.385(b)(2).

<sup>78</sup> The Police Board found O'Hara it "implausible that O'Hara did not know of those injuries at or prior to the time the [Andrew Wilson] confession occurred." (*see Findings and Decision*, 38 (PoliceBoardFindingsandDecisions.pdf)).

<sup>79</sup> See Criminal History of Wilson, Jackie F. (J.Wilson.PD.47.j.wilson.rap.sheets.pdf).

of their alleged occurrence, and before the arrest of the Wilson brothers, and before the injuries to Andrew Wilson became widely known, enhancing their credibility.

B. There are substantial reasons to doubt the credibility of Jackie Wilson:

- (i) Jackie Wilson's claim in his TIRC claim form (received May 26, 2011) and in his Commission interviews that he was subjected to an abbreviated session of electroshock during his interrogation at Area 2 had never been made before. His former attorney, Richard Kling, told TIRC that he did not recall Jackie Wilson ever making such an allegation to him. Given the vigorous defense Kling put forth on behalf of Jackie Wilson, and the prominent role of Andrew Wilson's electroshock allegations at the brothers' combined first criminal trial, the Commission finds the late-raised electroshock allegation suspect, and it diminishes Jackie Wilson's credibility.
- (ii) Jackie Wilson's recounting of events to the Commission differed from his motion-to-suppress testimony in other less dramatic, but still significant, respects. In his motion to suppress, Jackie Wilson testified he gave his attorney's card to a police officer, never to see it again. In his interview with the Commission, he testified he gave it to Hyman, because he didn't believe it would do any good to present the card to police.
- (iii) Jackie Wilson testified at his motion to suppress hearing that he was "positive" he had not seen his brother Andrew the day of his arrest, but reminded of the lineup in which they both participated, he conceded he had. This calls his memory into question.
- (iv) Unlike the case of Andrew Wilson, there is no physical or medical evidence of injury available to corroborate Jackie Wilson's allegations.
- (v) Jackie Wilson's extensive criminal history is a factor that cuts against his credibility.

C. There is certain evidence that corroborates some details provided by Jackie Wilson:

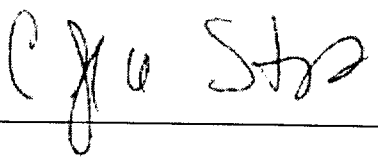
- (i) Jackie Wilson's testimony that he heard his brother screaming on the morning of February 14, 1982 is corroborated by the testimony of Detective Sammy Lacey and witness Doris Miller, who both testified to hearing screams either in Area 2 or coming from Area 2 that morning. Andrew Wilson testified he screamed and

begged for mercy during electroshock session before he was taken to Area 1 for a lineup.<sup>80</sup> Miller (a friend of Jackie Wilson's) and Andrew Wilson had an allegiance to Jackie Wilson, but Lacey did not. Hyman testified as to the relative proximity of the rooms in which the Wilson brothers were being kept, increasing the likelihood that any screams from Andrew would have been heard by Jackie.

- (ii) Jackie Wilson's testimony that officers other than McKenna and O'Hara were, at some point, in his interrogation room is corroborated by the testimony of the officer who arrested him, Chester Batey, who testified that he entered both Wilson brothers' rooms and even asked a question of Jackie Wilson.
- (iii) That Jackie Wilson would have had an attorney's card on him to present to police is plausible. Jackie Wilson's court-reported statement to Hyman shows that he had visited Solomon one or two days before his arrest on the murders.<sup>81</sup>
- (iv) Jackie Wilson's claims are consistent with the claims of not only Andrew Wilson, whom Jackie Wilson had seen in the jail holding area before his initial appearance,<sup>82</sup> but the claims made by others alleging beatings and misconduct during the course of the Fahey/O'Brien investigation.

On balance, while Jackie Wilson has credibility issues, the credibility issues with police and prosecutorial testimony in this case are at least as significant in light of the indisputable torture Andrew Wilson endured. Additionally, there is enough corroborating evidence of elements of Jackie Wilson's allegations that the Commission concludes that, by a preponderance of evidence, there is credible evidence of torture of Jackie Wilson that merits judicial review.

DATED: May 20, 2015



Cheryl Starks  
Chair  
Illinois Torture Inquiry and  
Relief Commission

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<sup>80</sup> Testimony of Andrew Wilson, November 12, 1982, before Judge John J. Crowley, pp. 1131-1206 (00006113.TIF).

<sup>81</sup> Statement of Jackie Wilson, February 14, 1982, p. 17 (Exhibit B).

<sup>82</sup> Testimony of Andrew Wilson, February 23, 1989, before Judge Brian Barnett Duff, 860-861 (00001985.tif).

## **Appendix A: Andrew Wilson's Torture Claim**

### **I. ANDREW WILSON'S CLAIM AND INJURIES**

#### **A. Andrew Wilson's Torture Claim**

Andrew Wilson claimed to have been tortured while in custody on February 14, 1982. He testified, in a hearing on his motion to suppress his confession (as well as at several subsequent civil trials), that while in custody he was beaten by multiple officers.<sup>1</sup> He also stated that officers suffocated him with a garbage bag.<sup>2</sup> He claimed that Burge and several other officers used two devices to deliver electric shocks to his body. One of the devices was connected to him by clips, which were attached at different times to his ears and nose.<sup>3</sup> He claimed the other device was used to deliver electric shocks to his genital region.<sup>4</sup> According to Wilson, he was handcuffed to a wall over a hot radiator while he was being shocked. When he was shocked, he would jerk uncontrollably, causing his body to come into contact with the radiator. This was the cause of burn marks on his face, chest, and right thigh.<sup>5</sup>

#### **B. Evidence of Andrew Wilson's Injuries**

Late in the evening the day of his arrest, Andrew Wilson was examined in the emergency room at Mercy Hospital. The attending physician, Dr. Geoffrey Korn, testified that Wilson had approximately fifteen injuries requiring treatment.<sup>6</sup>

Wilson was arrested at approximately 5:15 a.m. on February 14, 1982.<sup>7</sup> Several officers testified that Andrew Wilson was cut over the right eye during his arrest, although Deputy Superintendent Joseph McCarthy, the highest-ranking officer present at the arrest, testified at Andrew Wilson's suppression hearing he did not notice any injuries to Andrew Wilson's face immediately after his arrest.<sup>8</sup> There is no evidence that Wilson had any other injuries on his head, chest, or legs before arriving at Area Two, other than a scar on his forehead from a previous injury. Wilson was not wearing a shirt when he was initially arrested, and no officer saw any other injuries on his body immediately after his arrest.

After confessing to the murders of Police Officers William Fahey and Richard O'Brien, Wilson was driven to the police lock-up at 11<sup>th</sup> and State between 9:00 p.m. and 10:00 p.m.<sup>9</sup> The

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<sup>1</sup> Testimony of Andrew Wilson, November 12, 1982, at 1140, 1142, 1147, 1162-66 (00006113.pdf).

<sup>2</sup> *Id.* at 1140.

<sup>3</sup> *Id.* at 1146-48, 1151-55.

<sup>4</sup> *Id.* at 1154.

<sup>5</sup> *Id.* at 1151-55.

<sup>6</sup> Testimony of Geoffrey Korn, November 12, 1982, at 1064 (00006112.tif).

<sup>7</sup> Findings and Decision of the Police Board, February 10, 1983, at 7 (PoliceBoardFindingsandDecisions.pdf).

<sup>8</sup> Testimony of Joseph McCarthy, November 9, 1982, at 859, 862, 865 (00006115.pdf).

<sup>9</sup> Findings and Decision of the Police Board, February 10, 1983, at 12 (PoliceBoardFindingsandDecisions.pdf).



intake officer refused to accept Wilson because of his injuries.<sup>10</sup> The two officers who transported Wilson from Area Two then took him to Mercy Hospital, arriving there at approximately 10:45 p.m.<sup>11</sup>

Three physicians examined Andrew Wilson either on the day of his arrest or the following day. In addition to Dr. Korn, Dr. Stephen Goodman and Dr. John Raba examined Wilson, both on February 15 and Dr. Raba again on February 16. Dr. Stanley Harper, another physician at the Cook County Jail, treated Wilson regularly between February 17 and March 3.<sup>12</sup> Dr. Goodman examined Wilson when Wilson arrived at Cook County Jail. Finding Wilson's injuries "unusual," he contacted Dr. Raba, Medical Director at Cermak Health Services (the medical care provider for the Cook County Jail).<sup>13</sup> Dr. Korn and Dr. Raba testified at Wilson's suppression hearing.<sup>14</sup> They reported observing the following injuries on Andrew Wilson's person:

1. Wilson had three lacerations that required stitches: one above each eyebrow and one on the back of his head.<sup>15</sup>
2. Wilson had a black right eye and there was damage to the eye itself. Dr. Korn noted bleeding on the surface of the eye.<sup>16</sup> At Cook County Jail, Dr. Goodman diagnosed a corneal abrasion and put a patch over the right eye.<sup>17</sup> Dr. Raba lifted the patch when he inspected Wilson and noted that the eye was swollen and irritated, but not infected.<sup>18</sup>
3. Wilson had linear marks on his face, chest, and right thigh. Dr. Korn diagnosed the marks on Wilson's thigh as second-degree burns.<sup>19</sup> He initially recorded the marks on Wilson's face and chest as "rod streaks," by which he meant "abrasions or scratches."<sup>20</sup> He didn't initially recognize these as burns because he did not observe any blistering. At Wilson's motion to suppress hearing, Dr. Korn was shown pictures taken February 16, two days after he had examined Wilson, of those same injuries.<sup>21</sup> He testified that the photos showed blistering, which would indicate that the injuries were consistent with

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 13.

<sup>12</sup> Testimony of Stanley Harper, March 7, 1989, at 1805, 1819 (00005876.tif)..

<sup>13</sup> Testimony of John Raba, Nov. 12, 1982 at 1086-87 (00006112.tif).

<sup>14</sup> Dr. Goodman did not testify at Andrew Wilson's suppression hearing, but he was deposed before Wilson's civil trial. That testimony was read into evidence. Nothing he testified to in his deposition, taken seven years after Andrew Wilson's arrest, contradicts the testimony of either Dr. Korn or Dr. Raba.

<sup>15</sup> Testimony of Geoffrey Korn, November 12, 1982, at 1054 (00006112.tif); Testimony of John Raba, Nov. 12, 1982 at 1088-90 (00006112.tif).

<sup>16</sup> Testimony of Geoffrey Korn, November 12, 1982, at 1055-56 (00006112.tif).

<sup>17</sup> Testimony of John Raba, Nov. 12, 1982 at 1090 (00006112.tif).

<sup>18</sup> *Id.* at 1088.

<sup>19</sup> Testimony of Geoffrey Korn, November 12, 1982, at 1058 (00006112.tif).

<sup>20</sup> *Id.* at 1054-57.

<sup>21</sup> *Id.* at 1059-61.

burns.<sup>22</sup> He testified that it can take as long as twenty-four hours for blisters to form on a burn.<sup>23</sup> Dr. Raba testified that the marks on Wilson's face, chest, and right thigh were blistering lesions.<sup>24 25</sup>

4. Wilson had small, u-shaped marks on his ears. These marks were visible in photographs of Andrew Wilson taken on February 16, 1982. No medical testimony about the origins of these marks was provided at Wilson's motion to suppress hearing, but theories of possible causes were presented by both sides at Wilson's civil trials.<sup>26</sup>

5. Wilson's wrists and ankles were red and possibly swollen, consistent with the effects of handcuffs and ankle restraints.<sup>27</sup>

6. Wilson had some bruising on his forehead.<sup>28</sup>

## **II. ALTERNATE EXPLANATIONS OFFERED FOR ANDREW WILSON'S INJURIES**

### **A. Andrew Wilson's Criminal Trial<sup>29</sup>**

In response to Wilson's motion to suppress his confession, the State argued that he did not sustain his injuries between the time he arrived at Area Two and the time that he confessed to murdering Officers Fahey and O'Brien. William Kunkle, the Assistant State's Attorney prosecuting the Wilson brothers, focused on the timing of the injuries as opposed to their causes. He argued that there was no way to know when most of Wilson's injuries were received, just that they were not received while he was being interrogated prior to his confession.<sup>30</sup> This argument was supported by testimony from Assistant State's Attorney Lawrence Hyman and Detectives Patrick O'Hara and Thomas McKenna.

### **B. Andrew Wilson's First Civil Trial**

Andrew Wilson brought a civil rights action against Commander Burge, Police Superintendent Richard Brzeczek, Detectives John Yucaitis and Patrick O'Hara, and the City of Chicago. Burge testified that he did not go inside Wilson's interrogation room and had been

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<sup>22</sup> *Id.* at 1060.

<sup>23</sup> *Id.* at 1061.

<sup>24</sup> Testimony of John Raba, Nov. 12, 1982 at 1088 (00006112.tif).

<sup>25</sup> Dr. Raba also sent a letter, dated February 17, 1982, to Police Superintendent Richard Brzeczek asking for an investigation of Wilson's treatment. In that letter, he describes the injuries on Wilson's face, chest, and thigh as "linear blisters," and states that they are consistent with radiator burns.

<sup>26</sup> See Testimony of Robert Kirschner, March 9, 1989, at 2359-63 (00005877.tif); Argument by William Kunkle, March 29, 1989, at 4923 (00010205.TIF).

<sup>27</sup> Testimony of Geoffrey Korn, November 12, 1982, at 1057 (00006112.tif); Testimony of John Raba, Nov. 12, 1982 at 1089 (00006112.tif).

<sup>28</sup> Testimony of John Raba, Nov. 12, 1982 at 1088 (00006112.tif).

<sup>29</sup> There were actually two separate criminal trials. Andrew Wilson initially lost the motion to suppress his confession and was convicted by a jury. On appeal, the Illinois Supreme Court reversed and remanded, ruling that his confession should have been suppressed. Andrew Wilson was subsequently convicted a second time. Because the confession had already been suppressed, there was no testimony regarding Wilson's injuries at the second criminal trial.

<sup>30</sup> Argument by William Kunkle, Nov. 12, 1982, at 1302-03 (00006114.pdf).

completely hands-off with regards to Wilson's questioning and subsequent confession. The defense argued that Jon Burge was not even at Area 2 during significant portions of the day.<sup>31</sup> For example, the defense argued that Jon Burge was with the superintendent giving a press conference at 1121 South State.<sup>32</sup> Mr. Kunkle, now Burge's defense attorney, further stated that Andrew Wilson had plenty of time to attach a roach clip to his ears and nostrils which would explain the visible u-shaped marks.<sup>33</sup> In addition, the defense intimated that Andrew Wilson could not have been burned in his interrogation room – Detective Thomas McKenna testified the radiator there was broken on February 14, 1982.<sup>34</sup> In support of this theory, Dr. Raymond Warpeha testified that Andrew Wilson's injuries were not burns, but rather friction abrasions.<sup>35</sup>

### **C. Andrew Wilson's Second Civil Trial**

After the jury could not reach a unanimous verdict in the first trial, , Wilson's suit went before a jury a second time. However, the Defendants' theory about the nature and cause of Wilson's injuries changed. Dr. Warpeha did not testify. Instead, the defense argued that Andrew Wilson had both, "the motivation and the opportunity" to burn himself on the radiator in his Area Two interrogation room.<sup>36</sup> In support of this theory, William Coleman, a man who had been in jail with Wilson, testified that Wilson repeated his allegations of police beatings, but told him that his radiator injuries were self-inflicted while at Area 2 and that his electrocution allegations were fabricated.<sup>37</sup>

### **D. Police Board**

In 1989, The Office of Professional Standards (OPS) reopened<sup>38</sup> its investigation into Andrew Wilson's claims against Police Officers Burge, Yucaitis, and O'Hara. The officers again asserted that they had not physically abused Wilson. They argued that photographs of Wilson taken at 8:30 p.m. that day did not show any injuries save a "minor cut around his right eye."<sup>39</sup> They attempted to cast blame for some of Wilson's injuries on the "wagon men," the officers who transported him to the police lock-up and to Mercy Hospital when the intake officer at the police lock-up refused to assume custody of Wilson.<sup>40</sup> Dr. Warpeha again testified that none of Wilson's injuries were burns.<sup>41</sup> Dr. Warner Spitz, a forensic pathologist, testified that the injuries on Wilson's face and chest were not burns, though the injury to Wilson's right thigh

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<sup>31</sup> Argument by William Kunkle, March 29, 1989, at 4923 (00010205.TIF).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 4922.

<sup>34</sup> Deposition Testimony of Thomas McKenna, March 10, 1989, at 2536 (00006276.tif).

<sup>35</sup> Testimony of Raymond Warpeha, March 28, 1989, at 4382 (00010199.TIF).

<sup>36</sup> Argument by William Kunkle, August 4, 1989, at 6986 (00009957.TIF).

<sup>37</sup> Testimony of William Coleman, July 28, 1989, at 5859-5874 (00006126.TIF).

<sup>38</sup> OPS had previously investigated Wilson's claims, but closed the file in 1985 citing a lack of cooperation by Andrew Wilson.

<sup>39</sup> Findings and Decision of the Police Board, February 10, 1983, at 26 (PoliceBoardFindingsandDecisions.pdf).

<sup>40</sup> *Id.* at 34.

<sup>41</sup> *Id.* at 28.

was in fact a burn.<sup>42</sup> The Officers also introduced the previous testimony of William Coleman alleging that Andrew Wilson had intentionally burned himself on a radiator at Area Two.<sup>43</sup>

#### **E. Jon Burge's Criminal Trial**

In 2008, Jon Burge was charged with perjury and obstruction of justice in connection to Andrew Wilson's treatment at Area Two. The defense reverted to the first civil trial argument that the wagon men were responsible for Andrew Wilson's injuries.<sup>44</sup> In addition, the defense argued in closing that Andrew Wilson injuries were not burns.<sup>45</sup> Burge's attorney stated that had Wilson been burned, the hair on his chest and face would have been singed and a doctor would have put bandages on the wounds.<sup>46</sup> The defense also argued that Jon Burge was not present at Area 2 for significant portions of the day when Andrew Wilson claimed the torture occurred.<sup>47</sup> Mr. Beuke stated that Burge went to a press conference from 11:30 in the morning until 2:30 or 3:00 in the afternoon.<sup>48</sup>

### **III. COUNTERVAILING EVIDENCE**

The following evidence contradicts the non-torture theories:

1. Andrew Wilson's injuries were sustained while in custody on February 14<sup>th</sup>, 1982. Although most police testified Andrew Wilson sustained a cut over his right eye during his arrest, they also testified they saw no marks or injuries on his chest when he was arrested, shirtless, at 5:15a.m. He was in police custody from the moment of his arrest through his examination by Dr. Korn at Mercy Hospital that night, at which time it is beyond dispute that he had numerous injuries. In addition, Deputy Superintendent McCarthy testified Andrew Wilson's eye was not injured during the arrest.
2. Some of Wilson's injuries had to have been sustained while he was in custody at Area Two. It is likely that some of his injuries, some of the cuts and bruises, were sustained as he was being transported from Area Two to the police lock-up at 11<sup>th</sup> and State. However, some of Wilson's injuries cannot be explained by being beaten by the wagon men.
  - a. With the sole exception of Dr. Warpeha, every medical expert who has been called by any party at any proceeding has testified that the visible injuries on Andrew Wilson's right thigh were consistent with burns.

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 27.

<sup>44</sup> Argument by Richard Beuke, June 24, 2010, at 3463 (2010.6.24 transcript closing.pdf).

<sup>45</sup> *Id.* at 3464-3470.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 3473-3474

<sup>48</sup> *Id.*

- b. Both Dr. Korn and Dr. Raba, who treated Wilson in the hours and days after his injuries were sustained, testified that the marks on Wilson's cheek, chin, and chest were consistent with radiator burns.
  - c. Dr. Warpeha's and Dr. Spitz's testimony was disputed. Dr. Robert Kirschner, a forensic pathologist and Deputy Chief medical Examiner for Cook County, testified as an expert on behalf of Andrew Wilson at both civil trials and was the Police Board's medical expert during its investigation. He testified that the marks on Wilson's cheek, chin, and chest were consistent with radiator burns.<sup>49</sup> He also testified that the u-shaped marks on Wilson's ears and nose were consistent with the clips described by Wilson. Dr. Harper also testified, stating that the injuries he observed on Wilson's body were consistent with radiator burns.<sup>50</sup>
  - d. The only other radiator that Wilson would have been near on February 14, 1982, prior to his examination at Mercy Hospital was a radiator at the 11<sup>th</sup> and State police lock-up, and testimony at the Police Board hearings established that this other radiator was in "an open area with lots of pedestrian traffic."<sup>51</sup>
  - e. Andrew Wilson's right eye was visibly injured in photographs taken during the afternoon and evening of February 14.
3. Lawrence Hyman and Thomas McKenna have subsequently taken the Fifth when asked questions about Wilson's treatment, from which the commission draws adverse inferences about the truthfulness of their prior testimony.
  4. Detective Sammy Lacey testified that he heard screams emanating from the second floor of Area 2 where Andrew Wilson was being held.<sup>52</sup>
  5. The only evidence put forth that Andrew Wilson's injuries might have been self-inflicted was the testimony of William Coleman. Coleman was a repeat felon who had been convicted of multiple crimes of dishonesty, including fraud.<sup>53</sup> He waited several years to come forward with this claim, and there is evidence he did so in exchange for favorable treatment in connection with his own criminal proceedings.<sup>54</sup> Additionally, the explanation that Andrew Wilson burned himself on the radiator at

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<sup>49</sup> Testimony of Robert Kirschner, March 9, 1989, at 2356-58 (00005877.tif).

<sup>50</sup> Testimony of Stanley Harper, March 7, 1989, at 1807 (00005876.tif).

<sup>51</sup> Findings and Decision of the Police Board, February 10, 1983, at 34 (PoliceBoardFindingsandDecisions.pdf).

<sup>52</sup> Testimony of Sammy Lacey on June 9, 2010, p 1610 (2010.6.09 transcript Raba Lacey.pdf)

<sup>53</sup> See *Generally* Testimony of William Coleman on July 28, 1989, July 31, 1989, and August 1, 1989 (00006126.TIF, 00009944.TIF, 00009945.TIF, 00009946.TIF, 00009947.TIF)

<sup>54</sup> Findings and Decision of the Police Board, February 10, 1983, at 35 (PoliceBoardFindingsandDecisions.pdf).

Area 2 was advanced only after police first unsatisfactorily claimed that he was burned elsewhere, and that the radiator at Area 2 didn't work.

#### **IV. CONCLUSION**

This Commission finds, by a preponderance of the evidence, it is more likely than not that Burge and officers under his command tortured Andrew Wilson on February 14, 1982, the same day Jackie Wilson was arrested. It is clear that Andrew Wilson sustained injuries while in custody at Area Two. It is more likely than not that the marks on Wilson's cheek, chin, chest and right thigh were radiator burns. There was no place other than Area Two where Wilson could have sustained radiator burns. It is unlikely that those burns were self-inflicted. This, coupled with Fifth Amendment assertions by multiple officers who were present at Area Two and the testimony of the officer who heard screams coming from Wilson's interrogation room, undermine assertions that Area Two detectives did not torture Andrew Wilson. Burge was the commander in charge of the investigation and the detectives who questioned Wilson. Andrew Wilson has provided the only credible explanation for his injuries; the physical evidence, including the timing of the injuries, discredits alternative explanations.